

FCC MAIL SECTION

Federal Communications Commission

DA 00-1147

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DIST. FILE

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-321
Table of Allotments,)	RM-9733
FM Broadcast Stations.)	
(Grand Isle and Empire, Louisiana))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 17, 2000

Released: May 26, 2000

By the Chief, Allocations Branch:

1. The Commission considers herein the Notice of Proposed Rule Making, (DA 99-2353), released October 29, 1999, proposing the substitution of Channel 283C2 for Channel 283A at Grand Isle, the reallocation of Channel 283C2 to Empire, Louisiana, as that community's first local transmission service, and modification of the authorization issued for Station KBIL accordingly.¹ Petitioner filed supporting comments reaffirming its intention to apply for Channel 283C2 if allotted to Empire, Louisiana, as requested. No other comments were received.

2. As stated in the Notice, petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). As reported in the Notice, petitioner's request would enable it to provide a first local aural transmission service to Empire, Louisiana (pop. 2,654),² a census designated place that is not associated with any urbanized area, and would enable Station KBIL to expand the degree of service within its primary service area from its present theoretical level of 1,534 persons in an area of 1,790.3 square kilometers to 126,324 persons in an area of 8,376.6 square kilometers. Further, as previously determined the reallocation request will not result in the creation of any white or gray area and Grand Isle will continue to receive reception service from at least five fulltime broadcast stations. Additionally, the petitioner's proposal is mutually exclusive with its existing authorization at Grand Isle (pop. 1,455), as the distance to petitioner's specified site at Empire is 32.4 kilometers (20 miles) whereas a distance of 166 kilometers (103 miles) is required in this instance.

3. Based upon the above, as the petitioner's reallocation request is consistent with the

¹ Commission records reveal that an assignment of the construction permit for Station KBIL (File No. BAPH19991005AAM) from Blue Dolphin Communications, Inc., the party who initiated this proceeding), to KBIL, LLC ("KBIL"), was consummated on November 2, 1999. However, the principals remain unchanged.

² Population figures reported herein were obtained from the 1990 U.S. Census.

provisions of Section 1.420(i) of the Commission's Rules, we will substitute Channel 283C2 for Channel 283A at Grand Isle, reallocate Channel 283C2 to Empire, Louisiana, and modify the authorization for Station KBIL, as requested. The reallocation will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982),³ as it will provide a first local aural transmission service to the larger community and enable Station KBIL to increase its potential service area. We acknowledge that this reallocation will leave Grand Isle without any local aural service. While we carefully evaluate a proposal that would result in a loss of a community's only local aural service, we do not believe that the removal of an unbuilt station, such as Station KBIL, presents the parallel concerns with loss of service represented by the removal of an operational station since it does not represent a service that the public has become reliant upon. See Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997), and cases cited therein.

4. Channel 283C2 can be allotted to Empire, Louisiana, in conformity with the minimum distance separation requirements set forth in Section 73.207(b)(1) of the Commission's Rules, at the petitioner's intended site located 20.9 kilometers (13 miles) northwest of the community at coordinates 29-29-07 NL and 89-46-39 WL.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 10, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Empire, Louisiana	283C2
Grand Isle, Louisiana	--

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization for Station KBIL, Channel 283A, Grand Isle, Louisiana, (File No. BPH-19971106MB), IS MODIFIED to specify operation on Channel 283C2 at Empire, Louisiana, subject to the following conditions:

³ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is afforded priorities (2) and (3).]

- (a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, KBIL, LLC, permittee of Station KBIL, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and upgrade at Empire, Louisiana.

8. IT IS FUTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau